



## **LIBRARY OF CONGRESS**

### **U.S. Copyright Office**

#### **37 CFR Part 201**

**[Docket No. 2018-4]**

#### **Copyright Office Fees**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Supplemental notice of proposed rulemaking.

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**SUMMARY:** As part of its ongoing fee study, the Copyright Office proposes limited revisions to its previously proposed fee schedule relating to document recordation and new prospective group registration options. The proposed modifications would adjust the fee structure for document recordation from a fee formula based on the number of titles to a formula based on the number of works and alternate titles and registration numbers to which a document pertains, and make certain other clarifications. The Office is also noticing its intention to issue fees for its previously-proposed group registration options for short online literary works and for works contained on an album of music. The Office is providing an opportunity to the public to comment on these specific proposed changes before the Office's fee schedule is submitted to Congress.

**DATES:** Written comments must be received no later than 11:59 p.m. Eastern Time on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through

*regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office's website at <https://www.copyright.gov/rulemaking/feestudy2018/>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at [regans@copyright.gov](mailto:regans@copyright.gov), or Jalyce Mangum, Attorney-Advisor, by email at [jmang@copyright.gov](mailto:jmang@copyright.gov), or by telephone at 202–707–8350.

**SUPPLEMENTARY INFORMATION:**

**I. Fees Pertaining to Document Recordation**

On May 24, 2018, the Copyright Office issued a notice of proposed rulemaking proposing a new fee schedule for Copyright Office services (the “2018 NPRM”).<sup>1</sup> Included in the proposal were revised fees for recording documents with the Office, including transfers of copyright ownership and notices of termination.<sup>2</sup> As mentioned in that notice, the Copyright Office is developing a new electronic system through which the public will be able to submit documents for recordation online.<sup>3</sup> The Office is also in the

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<sup>1</sup> Copyright Office Fees, 83 FR 24054 (May 24, 2018). 163 comments were filed in response to the 2018 NPRM, and the Office's careful consideration of those comments will be reflected in its forthcoming study submitted to Congress pursuant to 17 U.S.C. 701(b), as well as any eventual adjustment instituted to the fee schedule. The focus of this supplemental NPRM, however, is on additional, targeted changes to the fee schedule, and the Office is not currently seeking additional comment on those proposed changes previously noticed in 2018.

<sup>2</sup> *Id.* at 24061.

<sup>3</sup> *Id.*

process of generally modernizing its recordation rules and practices.<sup>4</sup> In evaluating the Office's current recordation practices, the Office has now tentatively concluded that it should adjust the structure of its fees as detailed in the 2018 NPRM. Specifically, the Office proposes to switch from a fee formula based on the number of titles to a fee formula based on the number of *works*, which are identified by one title and/or registration number, and the number of *alternate identifiers* (alternate titles and registration numbers) to which a document pertains.

The fee proposed in the 2018 NPRM, like the current recordation filing fee, is comprised of (1) a base fee that includes one title, and (2) a "titles fee" for any additional titles beyond the first (sometimes called "alternate titles").<sup>5</sup> Under this structure, the Office calculates the appropriate filing fee by counting the total number of title names for works to which the document pertains. For example, a single work for which four different names are provided would have a title count of four for fee purposes (*e.g.*, "Harold & Kumar 2," also known as "Harold and Kumar 2," also known as "Untitled Harold and Kumar sequel," also known as "Harold & Kumar go to Amsterdam")<sup>6</sup>. If Copyright Office registration numbers are also provided for works identified in a document (whether through an electronic title list or otherwise), the titles fee is the same, even though it costs the Office more to process the document because of the extra work involved for staff to manually index those numbers when no electronic title list is

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<sup>4</sup> See Modernizing Copyright Recordation, 82 FR 52213 (Nov. 13, 2017); Modernizing Copyright Recordation, 82 FR 22771 (May 18, 2017).

<sup>5</sup> 83 FR at 24061; 37 CFR 201.3(c)(18).

<sup>6</sup> See Document Number V3548D204 (2007).

provided.<sup>7</sup> Thus, the current titles fee does not recognize the added benefit remitters receive by providing registration numbers in addition to title names.<sup>8</sup> Similarly, no title-related fee is collected where a document only identifies the works to which it pertains by using registration numbers, even though the remitter of a document indexed by registration numbers may benefit from the same constructive notice as a remitter recording a document that identifies works by their titles.

The Office now proposes to retain the group and tier structures previously proposed, but to base them on the number of *works*, which are identified by one title and/or registration number, and *alternate identifiers* (alternate titles and registration numbers) related to a document, rather than the number of titles. Under this structure, the first title and/or first registration number provided for a particular work constitutes a *work*. In other words, if a remitter describes a work using (i) only a single title name, (ii) only a single registration number, or (iii) both one title name *and* one registration number, then each description would count as one “work” for fee purposes.<sup>9</sup> In particular, this change is intended to encourage remitters to include a registration number that matches to a title, by clarifying that it will be indexed and at no additional cost. Where a work is identified by multiple title names or multiple registration numbers, every additional title name and additional registration number provided beyond the first would count as an *alternate*

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<sup>7</sup> An electronic title list is a list of certain indexing information about the works to which a document pertains, such as their titles, types, registration numbers, and authorship information.

<sup>8</sup> Cf. Fees for Electronic Recordation and Notices of Intention To Obtain a Compulsory License, 82 FR 52221, 52222–23 (Nov. 13, 2017) (“Under this scheme, larger filers submitting documents with a larger number of titles pay a higher fee for the added benefit they receive (when the fee is viewed on a per-title basis) to offset the lower total fee for smaller filers with fewer titles.”).

<sup>9</sup> For example, a recorded work would be calculated as a single fee regardless of whether it was identified as “Harold and Kumar 2,” “PAu003086781,” or “Harold and Kumar 2; PAu003086781.”

*identifier*. Thus, if a remitter describes a work using one title name, one registration number, and three additional title names, then the fee would be equal to the base fee plus the fee for three alternate identifiers.<sup>10</sup>

By adjusting the fee structure, the Office hopes to encourage the recordation of alternative titles that a remitter submits for the record, and, if applicable, any additional registration numbers that may pertain to the same work. As a rule, the Office issues only one basic registration for a work. However, there are exceptions that permit multiple registrations numbers for one work. For example, if a work was previously registered as an unpublished work, the Office will issue an additional registration for the first published edition of that work, even if the published version “is substantially the same as the unpublished version.”<sup>11</sup> Additionally, where someone other than the author is identified as copyright claimant in a registration, the Office will issue an additional registration for the same work to the author or joint author who seeks to name him or herself as the claimant.<sup>12</sup> A remitter may also have multiple registration numbers that pertain to renewal and supplementary registrations.

This change is expected to better equalize the fee structure for document recordation without significantly altering the fees that most remitters pay. In practice, the

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<sup>10</sup> For example, if a document that pertains to one work (“Harold & Kumar 2”), and contains one primary title (“Harold & Kumar 2”), one corresponding registration number (“PAu003086781”), and three alternate titles (“Harold and Kumar 2,” “Untitled Harold and Kumar sequel,” and “Harold & Kumar go to Amsterdam”), the fee would be equal to the base fee plus the fee for three alternate identifiers.

<sup>11</sup> 17 U.S.C. 408(e) (“Registration for the first published edition of a work previously registered in unpublished form may be made even though the work as published is substantially the same as the unpublished version.”); 37 CFR 202.3(b)(11)(i).

<sup>12</sup> 37 CFR 202.3(b)(11)(ii) & n.2. This policy aligns “with the fundamental thrust of the [Copyright Act of 1976] in identifying copyright, and the origin of all rights comprised in a copyright, with the author.” Applications for Registration of Claim to Copyright Under Revised Copyright Act, 42 FR 48944, 48946 (Sept. 26, 1977).

number of remitters that submit documents for recordation with multiple registration numbers for each work or documents that only contain registration numbers without any titles is relatively small, meaning that this proposed fee change should not impact most filers.<sup>13</sup> Finally, the differences between this proposed fee schedule and the proposal set forth in the 2018 NPRM relate to the description of the base fee and of “additional works and alternative identifiers”; the actual proposed monetary amounts remain the same.

The following examples illustrate the fee calculation under the proposed structure:

- If a document pertains to 20 works, and contains one title for each work, the fee would be equal to the base fee plus the fee for 19 additional works.
- If a document pertains to 20 works, and contains one registration number for each work, the fee would be equal to the base fee plus the fee for 19 additional works.
- If a document pertains to 20 works, and contains one title *and* one registration number for each work, the fee would still be equal to the base fee plus the fee for 19 additional works.
- If a document pertains to 20 works, and contains 20 primary titles, 20 corresponding registration numbers, and 10 alternate titles, the fee would be equal to the base fee plus the fee for 19 additional works and 10 alternate identifiers.<sup>14</sup>

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<sup>13</sup> The current fee structure already charges remitters for providing additional titles for a work.

<sup>14</sup> For example, if a document that pertains to three works (“Harold and Kumar,” “Harold and Kumar 2,” and “Harold and Kumar 3”), and contains three primary titles, three corresponding registration numbers, and nine alternate titles, the fee would be equal to the base fee plus the fee for two works and nine alternate identifiers.

- If a document pertains to 20 works, and contains 20 primary titles, 20 corresponding registration numbers, 10 alternate titles, and 10 additional registration numbers, the fee would be equal to the base fee plus the fee for 19 additional works and 20 alternate identifiers.<sup>15</sup>

The Office recognizes the general benefit to the public in having a more robust records catalog that includes more registration numbers for recorded documents, and does not wish for any new fees to overburden remitters and deter them from providing registration numbers. At the same time, the Office seeks to better recoup its costs and believes that those costs should be more equitably allocated among remitters based on the size of their filing. The Office is thus considering making changes to the fee schedule for recordation and related services to appear at 37 CFR 201.3(c):

<b>Recordation and related services</b>	<b>Current fees (\$)</b>	<b>Proposed fees (\$)</b>
(1) Recordation of a document, including a notice of termination and a notice of intention to enforce a restored copyright:		
(i) Base fee (includes 1 work identified by 1 title and/or registration number):		
Paper	105	125
Electronic	New fee	95

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<sup>15</sup> For example, if a document that pertains to three works (“Harold and Kumar,” “Harold and Kumar 2,” and “Harold and Kumar 3”), and contains three primary titles, three corresponding registration numbers, nine alternate titles, and three alternate registration numbers for the unpublished versions of the works (a rare occurrence for motion pictures, but used to illustrate the structure), the fee would be equal to the base fee plus the fee for two works and 12 alternate identifiers.

(ii) Additional transfer (per transfer) (for documents recorded under 17 U.S.C. 205)	105	95
(iii) Additional works and alternate identifiers:		
Paper (per group of 10 or fewer additional works and alternate identifiers)	35	60
Electronic:		
1 to 50 additional works and alternate identifiers	60	60
51 to 500 additional works and alternate identifiers	225	225
501 to 1,000 additional works and alternate identifiers	390	390
1,001 to 10,000 additional works and alternate identifiers	555	555
10,001 or more additional works and alternate identifiers	5,500	5,500
(iv) Correction of online Public Catalog data due to erroneous electronic title submission (per work or alternate identifier).	7	7
(2) To calculate the fee specified by paragraph (1), for each work identified in a document: (a) the first title and/or first registration number provided for that particular work constitutes a <i>work</i> ; and (b) each additional title and registration number provided for that particular work beyond the first constitutes an <i>alternate identifier</i> .		
(3) Special handling surcharge for recordation of documents	550	700

Additionally, the Office further proposes to extend to notices of termination the previously proposed reduced fees for electronic submission. It was a technical oversight not to include that proposal in the 2018 NPRM. Although electronic title lists may not currently be submitted with notices of termination, remitters will eventually be able to submit notices through the Office's electronic recordation system, and authors seeking to



record their notices of termination should get the same discount for electronic filing offered to remitters of other types of recordable documents.<sup>16</sup>

## **II. Fees Pertaining to New Group Registration Options**

The Office proposes fees for new group registration options that have recently been or will soon be established through rulemakings. The Office has recently proposed new group registration options for short online literary works<sup>17</sup> and for musical works, sound recordings, and certain other works contained on an album of music.<sup>18</sup> Under the proposed rules, applicants will be required to submit their claims through the electronic registration system, and they will be required to use the Standard Application. For these options, the Office proposes a filing fee equal to the fee that currently applies to any claim submitted on the Standard Application. In the 2018 NPRM, the Office proposed to increase this fee from \$55 to \$75.<sup>19</sup> If that proposal is adopted, the new fee will apply to any claim submitted on the Standard Application, including claims submitted under these new group registration options. Although these proposed group registration options will follow the Standard Application procedures, to avoid confusion, the Office proposes enumerating these new group options separately on its fee schedule and is now noticing them for public comment. Currently, the Office does not have the ability to charge differential prices when claims in multiple works are submitted on the Standard Application. However, the Office will consider different pricing models for such claims

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<sup>16</sup> The Office did not include in the 2018 NPRM the existing fee for correcting data in the public catalog that is incorrect due to erroneous information contained in an electronic title list. That was also a technical oversight, and that fee has now been added to the proposed fee schedule without change.

<sup>17</sup> Group Registration of Short Online Literary Works, 83 FR 65612 (Dec. 21, 2018).

<sup>18</sup> 84 FR 22762 (May 20, 2019).

<sup>19</sup> 83 FR 24054, 24057 (May 24, 2018).

as it begins to develop the technical and legal requirements for its next-generation registration system.<sup>20</sup>

As such, the Office is considering a new fee for new group registration options for short online literary works and for musical works, sound recordings, and certain other works contained on an album to appear at 37 CFR 201.3(c):

<b>Group Registrations</b>	<b>Current Fees (\$)</b>	<b>Proposed Fees (\$)</b>
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(10) Group registration of short online literary works	New Fee	75
(11) Group registration of musical works, sound recordings, and certain other works contained on an album	New Fee	75

The Office welcomes comment on these proposed changes.

**Dated:** June 14, 2019.

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**Regan A. Smith,**  
*General Counsel and*  
*Associate Register of Copyrights.*

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<sup>20</sup> See Registration Modernization, 83 FR 52336, 52339 (Oct. 17, 2018).

